

ORDER OF COMMISSION

Objections filed by hth companies, inc., (hth) and Thermaltech, Inc. (Thermaltech) filed on March 31, 2005, to Annual Wage Order No. 12, pertaining to the wage rate for the occupational title of asbestos worker in Section 001, Adair County (Objection No. 3), Section 004, Audrain County (Objection No. 4), Section 010, Boone County (Objection No. 5) and Section 016, Cape Girardeau County (Objection No. 6); issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 9, 2005.

Introduction

On March 9, 2005, the Division of Labor Standards, Department of Labor and Industrial Relations (Division) issued and filed with the Missouri Secretary of State Annual Wage Order No. 12. On March 31, 2005, Thermaltech, Inc., (Objector), by counsel, filed a timely objection to Annual Wage Order No. 12, alleging that the wage rates for the occupational title of Asbestos Worker in Adair, Audrain, and Boone Counties are inaccurate. On March 31, 2005, hth companies, inc., (Objector), by counsel, filed a timely objection to Annual Wage Order No. 12, alleging that the wage rate for the occupational title of Asbestos Worker in Cape Girardeau County is inaccurate.

On April 19, 2005, the International Association of Heat Frost Insulators and Asbestos Workers Local No. 1, AFL-CIO (Intervenor or Local No. 1), by counsel, filed a motion to intervene, which motion was granted April 20, 2005.

Pursuant to 8 CSR 20-5.010(3)(A), a consolidated pre-hearing conference was convened on May 3, 2005, after which the Commission's designated representative issued a Pre-Hearing Order setting forth the issues in dispute for hearing before the Commission.

The Commission convened a hearing on the above-referenced Objections on May 16, 2005. The Commission consolidated the objections for hearing. Mr. Stephen P. Schuster, Esq., appeared on behalf of Objectors. Mr. John H. Goffstein, Esq., appeared on behalf of Intervenor. Mr. Michael Pritchett, Assistant Attorney General, appeared on behalf of the Division. At the conclusion of the hearing, the parties requested that the Commission leave the record open for the filing of briefs. The Commission granted the motion and ordered the record left open until June 1, 2005, for the filing of briefs. Subsequently, Objectors requested that the record be left open and that the briefing deadline be extended until June 3, 2005, which request was granted. The record was closed June 3, 2005.

Post-Hearing Motions

On May 20, 2005, Asbestos Workers Local Union No. 1, Intervenor, filed a Motion to Admit the Supplemental Affidavit Testimony of Thomas Leahy (Motion). Within the Motion, Intervenor, requests that the Commission strike the testimony of Mr. Leahy and Mr. Hoberock as it relates to union employer payroll records on the basis that such testimony is not relevant and is without proper foundation. On May 23, 2005, hth companies, inc., and Thermaltech, Inc., Objectors, filed an objection to the motion, to which Intervenor filed a response on May 26, 2005. On May 24, 2005, Intervenor filed a second Supplemental Filing proffering additional evidence, to which Objectors objected on May 27, 2005.

The Commission left the record open solely for the purpose of allowing the parties to brief the issues to be decided. We deny Intervenor's request to supplement the record. Further, we will not now hear Intervenor's evidentiary objections. Such objections should have been raised during the hearing of this matter.

The post-hearing motions are denied.

Issues for Hearing

For Adair and Audrain Counties, Objector, Thermaltech, argues that the contractor reports submitted by Thermaltech with its objection report hours sufficient to establish the wage rates reflected therein as the prevailing wage rates for asbestos worker in Audrain and Adair Counties.

For Boone and Cape Girardeau Counties, Objectors, hth (Cape Girardeau) and Thermaltech (Boone) question the accuracy and reliability of contractor reports relied upon by the Division in determining the wage rate for asbestos worker. Specifically, Objectors believe the contractor reports upon which the Division relied may reflect:

- hours at hourly wage rates and benefits that differ from the actual wage rate and benefits paid for those hours
- more hours than actually worked
- hours for work performed in a county other than the county reflected on the contractor reports.

Findings of Fact

James Boeckman, Assistant Director for the Division, testified on behalf of the Division. Mr. Boeckman testified that the Division conducts wage surveys on an ongoing basis. The majority of the wage rate information is periodically reported to the Division by various entities through the filing of Contractor's Reports of Construction Wage Rates (contractor reports). Absent information to the contrary, the Division accepts the information on the contractor reports at face value.

Mr. Boeckman explained that the Division considers the wage information for work performed in each county, as reflected on the contractor reports, as well as the terms of collective bargaining agreements (CBAs) in determining the prevailing wage for each occupational title. The Division considers the rate with the highest number of reported hours to be the prevailing wage. For Audrain, Boone, and Cape Girardeau Counties, the Division considered contractor reports and the terms of the CBA in determining the prevailing wage rate for asbestos worker. For Adair, the Division considered only the terms of the CBA because the Division had received no contractor reports for work performed in Adair.

The table below summarizes the wage survey information in the possession of the Division as of March 9, 2005, the date the Division filed Annual Wage Order No. 12.

County	Hours Reported	Basic Hourly Rate Reported	Fringe Benefit Reported	Total Wages
Adair	0	-----	-----	-----
Audrain	13.0	27.93	11.27	39.20
Boone	19286.0	27.93	11.27	39.20
	10088.0	15.00	1.43	16.43
	3098.0	27.24	11.96	39.20
Cape Girardeau	5645.0	27.93	11.27	39.20
	5245.5	14.00	.92	14.92
	1236.0	27.24	11.96	39.20
	696.0	11.00	.92	11.92
	297.5	10.00	.92	10.92
	34.0	15.00	.92	15.92

Based upon the foregoing information, the Division determined the prevailing wage rates as:

County	Highest Hours or Contract Rate	Basic Hourly Rate	Fringe Benefit	Total Wages
Adair	Contract rate ¹	23.72	10.80	34.52
Audrain	13	27.24	11.96	39.20
Boone	22384 ²	27.24	11.96	39.20
Cape Girardeau	6881 ³	27.24	11.96	39.20

¹ contract wage rate as set forth in the controlling CBA

² 19286 + 3098 @ 39.20

³ 5645 + 1236 @ 39.20

With the filing of its objection, Thermaltech submitted a contractor report for Adair County. Anne McPherson, president of Thermaltech prepared the contractor report. The Adair contractor report reported 1,113.50 hours, at a basic hourly rate of \$15.00 plus fringe benefits of \$1.43. The contractor report reported data for more than one project. Ms. McPherson did not identify specific projects or project start dates on the contractor report. Thermaltech payroll records were admitted into evidence. The records reflect that Thermaltech paid workers for 901.50 hours of work on a public project in Adair County (Magruder Hall). Thermaltech's records reflect that employees were paid at a basic hourly rate of \$27.55 plus fringe benefits of \$4.38 for all hours worked on the public project. Ms. McPherson testified that the Magruder Hall project has "been going on for a couple years now," but she was unable to identify which Annual Wage order set the prevailing wage for the project.

With the filing of its objection, Thermaltech submitted a contractor report for Audrain County prepared by Ms. McPherson. The Audrain contractor report reported 248.50 hours, at a basic hourly rate of \$15.00 plus fringe benefits of \$1.43. The contractor report reported data for more than one project. Ms. McPherson did not identify specific projects or project start dates on the

contractor report. Thermaltech payroll records were admitted into evidence. The records reflect that Thermaltech paid workers for 219.50 hours of work on two public projects in Audrain County. Thermaltech's records reflect that employees were paid at a basic hourly rate of \$28.27 plus fringe benefits of \$4.87 for 163 hours worked on one public project (elementary school project). Thermaltech's records reflect that employees were paid at a basic hourly rate of \$27.94 plus fringe benefits of \$5.64 for 56.50 hours worked on another public project (Tri-County Nursing Home). The record reveals no evidence regarding which Annual Wage order governed each of the public projects.

Ms. McPherson testified repeatedly that Thermaltech always paid the prevailing wage on public works projects. Nevertheless, Ms. McPherson reported a wage rate of \$15 – Thermaltech's standard journeyman hourly rate – for all hours worked regardless of whether the work for those hours was performed on a public or private project. Ms. McPherson explained that she listed the wage rate for all hours at \$15 because the instructions that appear on the back of the Division's contractor report form instructed her to do so. A Contractor's Report of Construction Wage Rates (form LS-04) is in the record. The relevant instruction is set out in its entirety below:

5. Indicate the total number of employees and their hours worked in each occupational title. This must be consistent with the occupational titles identified in 8 CSR 30-3.060 (i.e., carpenter, plumber, laborer, operator, etc.). Multiple hourly rates paid to workers require a separate line for each occupational title and rate. These occupational titles apply to mechanics and laborers. They should not include apprentice, superintendent, supervisor, or foreman classifications. Working foremen are considered journeymen and should be reported at the journeyman hourly rate.

Wage rates submitted should only be for journeyman work. Employees should be reported at the journeyman rate. Any employee who receives wages higher than the journeyman rate can be reported at the journeyman rate only if they are a supervisor or foreman working with the tools. Only include hours spent working with tools.

Greg Hoberock, president of hth, testified on behalf of Objectors. Mr. Hoberock testified that Objectors questioned the reliability of combined contractor reports prepared and submitted by Intervenor on behalf of various contractors. Mr. Hoberock explained that Objectors subpoenaed payroll records from the contractors for work performed in Boone and Cape Girardeau Counties. Many, but not all, contractors complied with the subpoenas and produced payroll records. The payroll records are in the record.

Mr. Hoberock testified that most of the payroll records did not list the hourly wage rate paid to workers so he had to analyze the payroll records to determine the hourly rate paid. Mr. Hoberock explained that at his direction and under his supervision, data entry staff entered the contractors' raw payroll data into a computer program, which facilitated the compilation and sorting of wage rate data. Mr. Hoberock prepared wage rate summaries for multiple contractors. He also prepared county summaries of the wage rates paid to asbestos workers in Boone and Cape Girardeau Counties. Mr. Hoberock's summaries were admitted into the record without objection.

Mr. Hoberock explained the method and calculations he used to arrive at the wage rates included in his summaries. Mr. Hoberock divided gross pay by the number of hours worked to

arrive at the hourly wage rate. Mr. Hoberock's summaries reveal more than 70 wage rates paid to asbestos workers in Boone County and 12 wage rates paid to asbestos workers in Cape Girardeau Counties. Mr. Hoberock admitted that the payroll records provided him did not fully describe the payroll picture for each contractor. For example, the records did not clearly identify fringe benefit payments. Apprentice status was not indicated on some records. Further, Mr. Hoberock admitted he did not know if the amount he was using as the "gross" pay in his calculations may have, in fact, already been adjusted for deductions for things such as a cafeteria plan.

Mr. Hoberock testified that his review of the payroll records revealed 150 hours that were improperly reported in Boone County, although the work was performed in St. Louis. He testified his review also revealed projects for which Local No. 1 paid job targeting funds to the contractor.

Objectors subpoenaed the supporting documentation upon which Intervenor relied in preparing the combined contractor reports. Objectors received the contractor reports upon which Mr. Leahy based his combined contractor reports. Among the contractor reports was the contractor report of Bi-State Insulation for Cape Girardeau County, one of the contractors who did not supply payroll records to Objectors.

Thomas Leahy, business representative for Asbestos Workers' Local No. 1 testified on behalf of Intervenor. Mr. Leahy testified that Local No. 1 members voted to have \$1.27 per hour withheld from their wages and contributed to a job targeting fund (AIM). This amount is withheld on all jobs except federal Davis-Bacon jobs. The AIM fund is used to target projects by offering incentives in the form of wage subsidies to contractors hiring Local No. 1 members.

Mr. Leahy testified that signatory contractors provided contractor reports to Local No. 1. A Local No. 1 secretary reviewed the contractor reports and identified hours worked by journeymen and working foremen. Mr. Leahy testified that he prepared combined contractor reports based upon the contractor reports submitted to him, which combined reports he provided to the Division. If hours were reported at a foremen rate on the contractor reports submitted to him, he reported the hours on the combined reports at the journeymen rate.

Mr. Leahy testified that some of the union contractor payroll records offered by Objector reported commercial, overtime, and apprentice rates, which account for some of the non-contract rates Mr. Hoberock listed in his summaries.

Mr. Leahy testified that the rates paid to asbestos workers are governed by a CBA. He explained that the CBA contains a base hourly wage rate for journeymen. The CBA also contains a foremen wage schedule. Foremen wages are paid at the journeyman base rate plus \$1, \$2, \$3, or \$4. The CBA is in the record as an attachment to Mr. Boeckman's prefiled testimony.

Mr. Leahy testified that he knows the types of work Local No. 1 members perform because he goes to job sites and he speaks with contractors. Mr. Leahy testified that generally all foremen work as working foremen. He explained that the jobs on which the foremen worked were generally small jobs of one, two, or three workers.

Conclusions of Law

The Commission has a statutory duty to "rule on the written objection and make the final determination that it believes the evidence warrants." § 290.262.6 RSMo. While the wage rate

reports and collective bargaining agreements can constitute competent and substantial evidence upon which the Commission can establish a prevailing wage rate, nothing restricts us to considering only the contractor reports previously submitted to the Division in determining the correct wage rate for a craft. *City of Kennett v. Labor and Industrial Relations Commission*, 610 S.W.2d 623, 627 (Mo. App. 1981). We base our decision on all of the evidence submitted at the hearing.

The "prevailing wage" means the highest number of hours worked and paid at a given rate of pay in a locality in which public work is to be performed by workers engaged in work of similar character. § 290.210(5) RSMo; *Branson R-IV School District v. Labor and Industrial Relations Commission*, 888 S.W.2d 717, 721 (Mo. App. 1994). The wage rate is calculated by the mode method of statistical analysis, which dictates that the prevailing wage is the most frequently paid actual wage for a person in a given trade. *Central Missouri Plumbing v. Plumbers Local Union 35*, 908 S.W.2d 366, 371 (Mo. App. 1995). In setting the prevailing wage rate, it is appropriate to aggregate the number of hours worked at the collectively bargained rate in effect both before and after an incremental rate increase. *HTH Companies, Inc., v. Missouri Labor and Industrial Relations Commission*, 995 S.W.2d 503 (Mo. App. 1999)(HTH I). In addition, during the hours spent working with tools, a working foreman is a "workman" as defined by the prevailing wage law. § 290.230 RSMo.

Contractor's Report of Construction Wages, Journeyman Hourly Rate

Objector, Thermaltech, reported all working foremen hours at its regular journeyman rate of \$15.00, even hours for which Thermaltech paid the higher wage as set forth in an Annual Wage Order as the prevailing wage. Ms. McPherson explained that she reported hours in this manner because the instructions on the Division's contractor report form directed her to do so. In particular, she relies upon the following language: "Working foremen are considered journeymen and should be reported at the journeyman hourly rate."

We cannot condone Ms. McPherson's unique spin on the instruction. First, our decision must be guided by the Prevailing Wage Law and the Missouri cases interpreting the Law, notwithstanding the language of the Division's instructions. We are bound by statute to consider rates that are paid generally within the locality. § 290.262.1 RSMo. "Without question, the phrase 'rates that are paid' means the rates that are 'actually' paid . . ." *Branson*, 888 S.W.2d at 717. Second, Ms. McPherson's interpretation of the instruction, if accepted, would lead to a result which would thwart the legislative intent underlying the Prevailing Wage Law and defeat its purpose.

The Labor and Industrial Relations Commission is an administrative agency created by statute and, therefore, possesses no more authority than that granted by statute. *Mikel v. Pott Industries*, 896 S.W.2d 624, 626 (Mo. banc 1995). Objector's contention is rejected as it is beyond the Commission's statutory authority. Accordingly, we cannot accept Thermaltech's contractor reports at face value.

Target Funds

Objectors argue the Commission should discount wage rates submitted by Intervenor by \$1.27, the hourly amount deducted from the paychecks of Local No. 1 members to fund the union job targeting program. Objectors argue that because \$1.27 per hour is deducted from the pay of Local No. 1 members and ultimately paid to some contractors on targeted jobs, the \$1.27 is not actually received by the worker as a wage and is not properly treated as part of the worker's wage.

Objectors cite two federal cases as support for its argument: *Building and Construction Trades Department, AFL-CIO v. Reich*, 40 F.3d 1275 (D.C. 1994) and *NLRB v. International Brotherhood of Electrical Workers, Local 48, AFL-CIO*, 345 F.3d 1049 (9th Cir. 2003). Those cases considered the permissibility and impact of job targeting deductions and subsidies under the Davis-Bacon Act. In *Reich*, the court upheld the Secretary of Labor's decision that job targeting program deductions were prohibited on federal public works projects by the federal Davis-Bacon Act. In *IBEW, Local 48*, the court upheld a determination by the National Labor Relations Board (NLRB) that a union's assessment for a job targeting program on Davis-Bacon jobs was against public policy and did not constitute membership dues within the meaning of the National Labor Relations Act (NLRA).

A different line of cases suggest the union practice of job targeting is not a subject for our adjudication. In *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), the Supreme Court held that states must defer to the exclusive competence of the NLRB in matters subject to the NLRA, such as collective bargaining. *Garmon*, 359 U.S. at 245. In *Independent Electrical Contractors of Greater Cincinnati v. Hamilton County Division of Public Works*, 656 N.E.2d 18, 21 (Ohio App. 1995), an association of non-union contractors (IEC) filed a complaint alleging, among other things, that a union contractor (ESI) had violated the Ohio Prevailing Wage Law by making illegal deductions from union member paychecks to fund a job targeting fund. The Ohio court held that IEC's claim was preempted by the NLRA. The court concluded that to rule otherwise ...

... would allow the state to regulate the amount of union dues that could be withheld from members' paychecks and the purposes to which those dues could be put ... [IEC] actually seeks to have the state control matters at the heart of the collective-bargaining process, which is regulated by the NLRA. Under IEC's interpretation, ESI could comply with the Prevailing Wage Law only by breaching its duty to remit union dues under the collective-bargaining agreement, a violation of Section 8 of the NLRA. Therefore, we conclude that the issue is preempted under *Garmon*.

Hamilton County, 656 N.E.2d at 21.

The prevailing wage law defines "prevailing hourly rate of wages" as "wages paid generally, ... to workmen engaged in work of a similar character . . ." § 290.210 (5). The plain language of that statute indicates the amount paid to a worker should be considered as the wage rate. Both the *Branson* and *Central Missouri Plumbing* cases previously cited make clear that the statute means precisely what it says; the wages paid for hours worked. The statute does not concern itself with what a union does with dues it collects. The prevailing wage law allows labor organizations to collect dues or assessments from the workers' prevailing wages. § 290.305 RSMo.

These considerations lead us to side with the *Hamilton County* and *Garmon* cases. The job targeting issue is not properly before the Commission. Delving into the withholding of union dues from member paychecks and the purposes to which the dues are put is beyond the Commission's statutory authority and purview. For the foregoing reasons, we reject Objectors' argument.

Prevailing Wage for Adair County

The 901.50 hours reported by Thermaltech for the Adair County public project (Magruder Hall) prevail over all other hours. The 901.50 Magruder Hall hours exceed the number of hours reportable at Thermaltech's regular journeyman rate (212 hours) and exceed the number of hours reported at the collective bargaining agreement contract rate (0 hours). The prevailing wage for asbestos worker in Adair County is the wage rate Thermaltech paid to its employees on the public project.

We have considered the testimony of Ms. McPherson and the Thermaltech payroll records. It is clear that Thermaltech paid a basic hourly wage of \$27.55 for the prevailing hours. What is not clear is how much Thermaltech paid in fringe benefits. The payroll records reflect that Thermaltech paid \$4.38 per hour in fringe benefits. Ms. McPherson testified that Thermaltech paid the employees an additional \$1.63 per hour in health and welfare benefits, which amount does not appear in the payroll records. If we were to consider only this evidence, we would conclude that Thermaltech paid a total wage of \$33.56 ($27.55 + 4.38 + 1.63$) per hour on these projects.

The record reveals additional evidence for our consideration. Ms. McPherson testified adamantly that Thermaltech has always complied with the prevailing wage law. We accept her testimony. Therefore, we must conclude that Thermaltech paid no less than the prevailing wage rate as set forth in the annual wage order applicable to the Magruder Hall project.

Thermaltech's contractor report does not identify the contract date for the Magruder Hall project. Neither Thermaltech's payroll records nor Ms. McPherson's testimony reveal which wage order governed the Magruder Hall project. "The Commission must make its decision on the evidence presented to it, even if it would prefer more detailed or precise evidence." *HTH I*, 995 S.W.2d at 508.

According to Ms. McPherson, the Magruder Hall project has been ongoing for at least two years. Annual Wage Order No. 9 set the prevailing wage rates for projects contracted between two and three years ago. We conclude that Annual Wage Order No. 9 governed the public project in Adair County. Under Annual Wage Order No. 9, the prevailing wage rate for asbestos worker in Adair County was a basic hourly rate of \$27.54 plus fringe benefits of \$8.76 per hour for a total hourly wage of \$36.30.

Because Thermaltech paid its employees no less than the prevailing wage of \$36.30 and because Thermaltech paid a basic hourly wage of \$27.55, we must conclude that Thermaltech paid no less than \$8.75 per hour for fringe benefits ($\$36.30 - 27.55$). Based upon all of the evidence, we conclude that the prevailing wage for asbestos worker in Adair County is \$36.30 (\$27.55 basic plus \$8.75 fringe).

Prevailing Wage for Audrain County

The 163 hours reported by Thermaltech for Audrain County for the elementary school public project prevails over the contract rate since only 13 hours were reported at the contract rate. The prevailing wage for asbestos worker in Audrain County is the wage rate Thermaltech paid to its employees on the elementary school project. As with Adair County, Thermaltech's contractor report does not identify the contract date for the project. Neither Thermaltech's payroll records nor Ms. McPherson's testimony reveal which wage order governed the project. Annual Wage Order No. 9 set the basic hourly wage for asbestos worker in Audrain County at

\$28.26. Thermaltech paid its workers a basic hourly wage of \$28.27. We conclude that Annual Wage Order No. 9 governed the elementary school project.

Annual Wage Order No. 9 set the wage rate for asbestos worker in Audrain County at \$38.00 (\$28.26 basic hourly plus \$9.74 fringe benefits). Because we accept Ms. McPherson's testimony that Thermaltech complied with the prevailing wage law, we conclude that Thermaltech paid its workers no less than the \$38.00 on the elementary school project. Based upon the foregoing, we conclude that the prevailing wage for asbestos worker in Audrain County is \$38.00 (\$28.27 basic hourly + \$9.73 fringe benefits).

Prevailing Wage for Boone County

Objector, Thermaltech, lacks confidence in the hours reported by Mr. Leahy on behalf of union contractors in Boone County. Mr. Hoberock analyzed payroll records of several contractors and prepared summaries of the wages paid to asbestos workers by those contractors in Boone County. According to Mr. Hoberock's summaries, the payroll records reveal over 70 different wage rates paid to asbestos workers in Boone County.

Objector does not dispute that it is proper for the Commission to aggregate the hours paid at the original collective bargaining agreement rate of \$27.93/\$11.27 (5870.5 hours) and the adjusted collective bargaining agreement rate of \$27.24/\$11.96 (1928 hours). Intervenor urges that the Commission also aggregate all hours paid at a wage rate \$1, \$2, \$3, or \$4 higher than those contract rates (dollar premium rates). Intervenor urges that those hours are includible because those dollar premium rates reflect hours worked by working foremen. Objector does not dispute that working foremen hours are aggregable with journeymen hours. Rather, Objector opposes inclusion of the dollar premium hours on the ground that Intervenor has not proven that the dollar premium rates were paid to working foremen.

We accept Intervenor's argument. The collective bargaining agreement sets forth the dollar premium foremen wage scale. Mr. Leahy testified that all workers paid a dollar premium wage are working foremen. Mr. Leahy, as the business representative for Local No. 1 is qualified to testify as to the types of jobs upon which its members work and the type of work the members perform on those jobs. We find that all workers paid a dollar premium wage were working foremen. We conclude that hours reported at the dollar premium wages reflected in the foremen wage schedule -- \$28.93, \$29.93, \$30.93, \$31.93, \$28.24, \$29.24, \$30.24, and \$31.24 -- are properly reportable at the base journeymen rates of \$27.93 and \$27.24.

Attached to Objector's Exhibit 26(a), are contractor reports provided to Mr. Leahy by the contractors. Each such contractor report is signed by a representative of the contractor certifying that the hours and wage rates reported are correct. We find these underlying contractor reports reliable.

We need not pass on the reliability of Intervenor's combined contractor reports because Objector's own evidence supports Intervenor's position. Mr. Hoberock's Boone County summary reveals that contractor payroll records support a finding that 13,738.75 hours were paid at includible wage rates.¹ These hours prevail over the 10,088 hours paid at \$15 as

¹ See Objector's Exhibit 19

5870.50	hours at 27.93 base
877.00	hours at 28.93 base
879.00	hours at 29.93 base
2931.25	hours at 31.93 base

1928.00	hours at 27.24 base
894.00	hours at 28.24 base
216.00	hours at 29.24 base
143.00	hours at 31.24 base

reported by Thermaltech, as well, as all other hours paid at any other rate. Based upon the foregoing, we conclude that the prevailing wage for asbestos worker in Boone County is \$39.20 (\$27.24 basic hourly + \$11.96 fringe benefits).

Because more than 150 hours separate the two rates highest in hours, we need not determine whether Mr. Hoberock is correct in his assertion that 150 hours performed in St. Louis, were improperly reported by Intervenor as performed in Boone County.

Prevailing Wage for Cape Girardeau County

Objector, hth, lacks confidence in the hours reported by Mr. Leahy on behalf of union contractors in Cape Girardeau County. Objector argues that the contractor reports upon which the Division relied are unreliable because Mr. Leahy prepared them without the benefit of the contractor payroll records.

Mr. Hoberock analyzed payroll records of several contractors and prepared summaries of the wages paid to asbestos workers by those contractors in Cape Girardeau County. According to Mr. Hoberock's summaries, the payroll records reveal 12 different wage rates paid to asbestos workers in Cape Girardeau County. See Objectors' Exhibit 25.

Attached to Objector's Exhibit 25, are contractor reports provided to Mr. Leahy by the contractors. Each such contractor report is signed by a representative of the contractor certifying that the hours and wage rates reported are correct. We find these underlying contractor reports reliable.

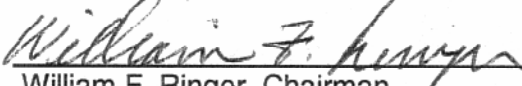
We need not pass on the reliability of Intervenor's combined contractor reports because Objector's own evidence supports Intervenor's position. Our review of Exhibit 25 reveals that Bi-State reported 1834 hours at \$27.93/\$11.27. Mr. Hoberock found 4369.50 hours reported at includable rates, without consideration of hours worked by Bi-State.²

² See Objector's Exhibit 24
3184.50 hours at 27.93 base
965.00 hours at 27.24 base
184.00 hours at 28.24 base
36.00 hours at 29.24 base

These 6203.50 (1834.00 + 4369.50) hours prevail over the 5,245.5 hours paid at \$14 as reported by hth.³ Based upon the foregoing, we conclude that the prevailing wage for asbestos worker in Cape Girardeau County is \$39.20 (\$27.24 basic hourly + \$11.96 fringe benefits).

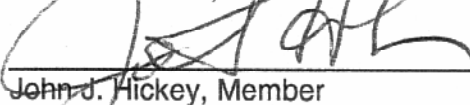
Given at Jefferson City, State of Missouri, this 21st day of June, 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

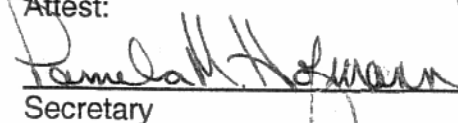

William F. Ringer, Chairman

CONCURRING OPINION

Alice A. Bartlett, Member


John D. Hickey, Member

Attest:


Secretary

³ We recognize the possibility that a contractor may make an arithmetic error. We do not think this possibility makes the contractor's reports unreliable. In this instance, even if Bi-State erroneously doubled the hours worked in Cape Girardeau County at \$27.93/11.27 -- a possibility we reject -- the hours reported at \$27.93 would still prevail.

CONCURRING OPINION

I agree with the logic of Objectors' argument that by including the \$1.27/hour withheld from Local No. 1 members' paychecks in our prevailing wage determination, our determination does not accurately reflect the real hourly wages paid from contractors to Local No. 1 members. However, I must concur with the conclusion of the majority that this Commission does not have authority to address the withholding.

A handwritten signature in cursive script that reads "Alice A. Bartlett". The signature is written in dark ink and is positioned above a horizontal line.

Alice A. Bartlett, Member